

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1311 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

AHMEDABAD MUNICIPAL CORPN

Versus

STATE BANK OF SAURASHTRA

Appearance:

MR JR NANAVATI with
Mr.A.R.Thakkar for appellant.
No one is present on behalf of respondent despite service and despite the fact that the name of the learned counsel representing the State Bank of Saurashtra has been shown in the Board.

CORAM : MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 23/04/99

ORAL JUDGEMENT (Per M.R.Callla,J)

This Appeal under S.411 of the B.P.M.C.Act is directed against the order dt.20.1.83 passed by the Small Causes Court at Ahmedabad in M.V.Appeal No.2626/80. The

premises in question is situated in a building known as Ajanta Commercial Building near Income-tax Four roads, Ahmedabad. The premises are on the ground floor (1032 sq.ft.) and basement (1473 Sq.ft.). The Municipal Corporation assessed the Gross Rateable Value (hereinafter referred to as 'the G.R.V.') of the premises at Rs.66276/- for 1979-80. Aggrieved from the said assessment the respondent - Bank preferred an Appeal under S.406 of the Act. The Small Causes Court has reduced the amount of G.R.V. to Rs.8488/- from that of 66276/- with regard to the said premises being Final Plot No.100/GF/1 in Ellisbridge Ward No.A/1 in T.P.S.3.

We have gone through the impugned order and find that the learned counsel, who appeared for the Bank before the Small Causes Court ultimately did not press the question of law, which he had argued at the beginning to the effect that the Assessor and Collector had no legal authority to decide the G.R.V. and that there was a breach of Rules 16 to 18 as in this regard the case of the Municipal Corporation was that the Municipal Commissioner had the authority to delegate the power under S.69 of the Act and the Assessor and Collector had exercised this authority while determining the G.R.V.

From the reading of para 5 of the impugned order, it appears that the learned Small Causes Court, after making reference to Dewan Daulatrai Kapoor's case, reported in AIR 1980 SC 541 in para 3 of the impugned order, has referred to some earlier orders passed by him. The Small Causes Court has mentioned in para 5 that Times of India was a tenant on the ground floor of the building known as "Fadia Chambers" situated on main Ashram Road. The Reference has been made to M.V.Appeal No.1707/80 in which the Small Causes Court had earlier decided on 15.12.82 after considering the available instances of premises at Ashram Road that the reasonable rent of the premises was 40 Ps. per sq.ft. and on that basis the contractual rent in the present case has been held to be exorbitant. In our opinion, the burden was on the respondent - Bank to prove by positive evidence that the amount of contractual rent was excessive and exorbitant. Even if it is taken that the Small Causes Court could enter into the exercise to take into consideration the standard rent, it could not have based its finding with regard to the rent being exorbitant by making a bald reference to his earlier order dt.15.12.82 passed in case of M.V.Appeal No.1707/80 i.e. the Appeal of Times of India. Apart from the fact that the premises are not in the same building and are situated at different location, we find that the rent in the present case could not be

held to be exorbitant on the basis of the earlier order dt.15.12.82, to which reference has been made by the learned Small Causes Court. No evidence was tendered by the respondent - Bank and in absence of such an evidence, we find that the rates, as were fixed in the earlier decision, could not form the basis of the order so as to hold the rent to be exorbitant, merely because the two premises are situated on Ashram Road. The contractual rent, which is being paid, is a relevant consideration. It is not known as to what was the contractual rent in the case of M.V.Appeal No.1707/80, which was decided on 15.12.82 and on what material the opinion was formed that the rent should be 40 Ps. per sq.ft. Even otherwise, we find that at the relevant time on Ashram Road, the rate prima facie could not be taken to be 40 Ps. per sq.ft. with regard to the premises in question, particularly when the contractual rent, which was being actually paid was much more higher i.e. at the rate of Rs.2.10 Ps.per sq.ft for ground floor and Rs.1.10 Ps. per sq.ft. for basement. The Small Causes Court had determined the G.R.V. on the basis that the reasonable rate should be 40 Ps.per.sq.ft. for the ground floor and 20 Ps. per sq.ft. for the basement. We, therefore, find that the basis, on which the G.R.V. has been determined by the Small Causes Court by taking the rate of rent per Sq.ft., as above, in case of ground floor as well as basement, is rather amazing. Unless any cogent material was made available so as to reduce the amount of contractual rent for the purposes of assessment of G.R.V., the Small Causes Court could not have and should not have interfered with the assessment made by the Corporation and to slash down the G.R.V. of the premises in question from Rs.66276/- to that of Rs.8488/- only for the year of 1979-80 in question.

We find that the impugned order dt.20.1.83, therefore, cannot be sustained in the eye of law. The same is hereby set aside. This Appeal is accordingly allowed. No order as to costs.